

STAND. COM. REP. NO. 3046

Honolulu, Hawaii

MAR 21 2014

RE: H.B. No. 1973
H.D. 1
S.D. 1

Honorable Donna Mercado Kim
President of the Senate
Twenty-Seventh State Legislature
Regular Session of 2014
State of Hawaii

Madam:

Your Committee on Judiciary and Labor, to which was referred
H.B. No. 1973, H.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO WORKERS' COMPENSATION,"

begs leave to report as follows:

The purpose and intent of this measure is to provide an incentive for injured workers to return to part-time work by requiring employers to make timely payment of temporary partial disability benefits to their injured workers. Specifically, this measure:

- (1) Imposes a penalty on an employer or insurance carrier who does not pay an employee temporary partial disability benefits within fourteen calendar days after the end of the employee's customary workweek;
- (2) Requires that such penalty is due and payable to the employee without the necessity of an order or decision from the Director of Labor and Industrial Relations;
- (3) Clarifies that an employee's eligibility for temporary total or partial disability benefits shall be determined by certification from the employee's attending physician every thirty days or by an examination of the entirety of the employee's available medical records by another physician, if the employee's attending physician is not available;



- (4) Establishes that failure of the employee's attending physician to certify the dates of disability in an interim report does not automatically disqualify the employee from receiving temporary total or partial disability benefits;
- (5) Allows contemporaneous certification of disability to be waived and retroactive certification of disability to be allowed under certain conditions; and
- (6) Clarifies that the certification requirements only apply during the period that an employee's injuries have not reached medical stabilization or the employee is enrolled in the vocational rehabilitation process.

Your Committee received testimony in support of this measure from the Department of Labor and Industrial Relations; International Longshore and Warehouse Union, Local 142; and five individuals. Your Committee received testimony in opposition to this measure from the Department of Human Resources Development; Department of Accounting and General Services; Department of Human Resources, City and County of Honolulu; Hawaii Insurers Council; Building Industry Association of Hawaii; Chamber of Commerce Hawaii; Property Casualty Insurers Association of America; National Association of Mutual Insurance Companies; Hawaiian Electric Company, Inc.; John Mullen & Co., Inc.; and Kona-Kohala Chamber of Commerce.

Your Committee finds that existing law imposes a penalty on an employer or insurance carrier for nonpayment of temporary total disability benefits but does not impose penalties for nonpayment of temporary partial disability benefits. The Department of Labor and Industrial Relations testified that one of the underlying policies in workers' compensation is to encourage an injured employee to promptly return to work. However, existing law discourages an injured worker to return because it is uncertain whether temporary partial disability benefits will be paid in a timely manner. This measure provides an incentive for injured workers to return to part-time work by requiring employers to make timely payment of temporary partial disability benefits to their injured workers.

Your Committee has amended this measure by:



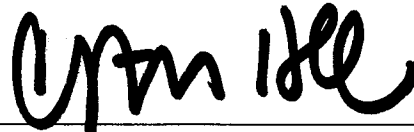
- (1) Adopting the language suggested by the Department of Labor and Industrial Relations to:
- (A) Add to section 1 language that clarifies that although temporary total disability benefits and temporary partial disability benefits are treated differently under the law, both are deemed compensation under the workers' compensation law, and establishes that this measure attempts to provide more uniform application of workers' compensation case law and provide statutory entitlements that are due to disabled employees;
 - (B) Clarify that an employer or insurance carrier shall pay an employee temporary partial disability benefits within fourteen calendar days after the end of the employee's workweek as defined under administrative rule, rather than the customary workweek;
 - (C) Include any sanctions assessed pursuant to section 386-92(a), Hawaii Revised Statutes, to the penalty imposed on an employer or insurance carrier who fails to pay an employee temporary partial disability benefits within the required time period;
 - (D) Add that a nonpayment of disability benefits is excused if the employer or insurance carrier was unable to make payment due to conditions over which the employer or insurance carrier had no control, including compliance with public employment pay periods;
 - (E) Replace "attending physician" with "primary care physician";
 - (F) Clarify that an employee's eligibility for disability benefits shall be determined by an examination of the employee's available medical records by another physician who has been involved in the employee's treatment and approved by the Director of Labor and Industrial Relations if the employee's primary care physician is not available;



- (G) Clarify that the failure of the employee's primary care physician to certify the dates of disability in an interim report does not disqualify, rather than automatically disqualify, the employee from disability benefits;
 - (H) Clarify that contemporaneous certification of disability can be waived and retroactive certification of disability is allowed if another physician who has been involved in the employee's treatment and approved by the Director of Labor and Industrial Relations has an opportunity to examine the employee's previous medical records in the current pending claim in the case that the employee's primary care physician is not available; and
 - (I) Clarify that retroactive certification of disability may be requested only once for the entire claim and shall be made within twelve months of the date of the request; and
- (2) Changing the effective date from July 1, 2300, to upon approval.

As affirmed by the record of votes of the members of your Committee on Judiciary and Labor that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1973, H.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 1973, H.D. 1, S.D. 1, and be referred to the Committee on Ways and Means.

Respectfully submitted on
behalf of the members of the
Committee on Judiciary and
Labor,



CLAYTON HEE, Chair



The Senate
Twenty-Seventh Legislature
State of Hawai'i

Record of Votes
Committee on Judiciary and Labor
JDL

Bill / Resolution No.:* HB 1973, HD1	Committee Referral: JDL, WAM	Date: 3/18/14		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <div style="display: flex; justify-content: space-between; align-items: flex-start;"> <div style="text-align: center;"> <input type="checkbox"/> Pass, unamended 2312 </div> <div style="text-align: center;"> <input checked="" type="checkbox"/> Pass, with amendments 2311 </div> <div style="text-align: center;"> <input type="checkbox"/> Hold 2310 </div> <div style="text-align: center;"> <input type="checkbox"/> Recommit 2313 </div> </div>				
Members	Aye	Aye (WR)	Nay	Excused
HEE, Clayton (C)	✓			
SHIMABUKURO, Maile S.L. (VC)	✓			
GABBARD, Mike	✓			
GALUTERIA, Brickwood	✓			
IHARA, Jr., Les				✓
SOLOMON, Malama	✓			
SLOM, Sam			✓	
TOTAL	5		1	1
Recommendation: <div style="display: flex; justify-content: space-around; margin-top: 5px;"> <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted </div>				
Chair's or Designee's Signature:				
Distribution: <div style="display: flex; justify-content: space-between; font-size: small;"> <div>Original File with Committee Report</div> <div>Yellow Clerk's Office</div> <div>Pink Drafting Agency</div> <div>Goldenrod Committee File Copy</div> </div>				

*Only one measure per Record of Votes